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FURTHER PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF THE WORK OF THE COMMISSION

Report of the Secretary-General on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS

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Introduction

1. This report has been prepared in accordance with Commission on Human Rights resolution 1994/49, entitled "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS)", of 4 March 1994, in which the Commission requested the Secretary-General to prepare, for its consideration at its fifty-first session, a report on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS and to make recommendations thereon.

2. In the same resolution, the Commission on Human Rights called upon all States to:

(a) Ensure that their laws, policies and practices, including those introduced in the context of HIV/AIDS, respected human rights standards and did not have the effect of inhibiting programmes for the prevention of HIV/AIDS and for the care of persons infected with HIV/AIDS (para. 1);

(b) Take all the necessary steps, including appropriate and speedy redress procedures, to ensure the full enjoyment of civil, political, economic, social and cultural rights by people with HIV/AIDS, their families and those in any way associated with them, and people presumed to be at risk of infection, with particular attention to women, children and vulnerable groups, in order to prevent discriminatory action against them or their social stigmatization, and to ensure their access to the necessary care and support (para. 2).

3. In addition, the Commission urged all States to:

(a) Include in their AIDS programmes measures to combat social stigmatization, discrimination and violence directed against persons with HIV/AIDS, and to take the necessary steps to develop the supportive social environment necessary for the effective prevention and care of AIDS (para. 3);

(b) Review their legislation and practice to ensure the right to privacy and integrity of persons with HIV/AIDS and those presumed to be at risk of infection (para. 4).

4. In accordance with the above, the Secretary-General sent out a note verbale, dated 22 July 1994, to Governments, requesting information with regard to international and domestic measures taken to protect human rights in the context of HIV/AIDS. Replies were received from the Governments of Angola, Australia, Bangladesh, Chile, China, Croatia, the Islamic Republic of Iran, Iraq, Luxembourg, Mauritius, Mexico, Morocco, New Zealand, the Republic of Korea, Slovenia, Switzerland, Turkey, Yugoslavia and Zimbabwe.

5. The Secretary-General also sent out a communication with a similar request for information, and drawing attention to the preliminary, progress and final reports of Mr. Luis Varela Quirós, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9, E/CN.4/Sub.2/1991/10, E/CN.4/Sub.2/1992/10 and

E/CN.4/Sub.2/1993/9), to relevant bodies of the United Nations system, specialized agencies, working groups and special rapporteurs, the human rights treaty bodies, the World Bank and other relevant financial institutions, and those concerned with the status of women, as well as non-governmental organizations.

6. Replies were received from the Department for Humanitarian Affairs, the Division for the Advancement of Women, the General Assembly and Trusteeship Council Affairs Division, the Economic Commission for Latin America and the Caribbean, the Economic and Social Commission for Western Asia, the United Nations Environment Programme, the United Nations Population Fund, the Office of the United Nations High Commissioner for Refugees, the United Nations Interregional Crime and Justice Research Institute, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization (Global Management Committee Task Force on HIV/AIDS Coordination and Global Programme on AIDS) and the International Monetary Fund.

7. Replies were also received from the Inter-American Court of Human Rights, Interpol, the Inter-Parliamentary Union and the Organization of African Unity, as well as the following non-governmental organizations: Caritas Internationalis, International Confederation of Midwives, International Council of Nurses, International Fellowship of Reconciliation, International Institute of Humanitarian Law, International Lesbian and Gay Association, Soroptimist International, World Education Fellowship and World Organization against Torture.

8. In order to set the framework for discussion, this report first outlines those human rights concerns relevant in the context of HIV/AIDS and recalls the links between the mutually reinforcing public health and human rights rationales which are often invoked in the context of the epidemic.

I. HUMAN RIGHTS AND HIV/AIDS

9. It is within the context of what is called the "third epidemic" 1/ of HIV/AIDS, namely the social, cultural and economic reactions to the HIV/AIDS epidemic, that the issue of protection of human rights and fundamental freedoms of persons infected with HIV and persons with AIDS, as well as all concerned persons, arises.

10. Indeed, a strong and clear public health rationale exists for the protection of human rights and the dignity of infected persons. For example, if it is the common practice that HIV infection, or simply suspicion of infection, leads to a stigmatization of the person or group, or to discrimination vis-à-vis the concerned (such as loss of employment or obstacles to access to education), these persons will undoubtedly actively try to avoid detection and, as a result, lose contact with health and social services. This reluctance to seek assistance out of fear of stigmatization and discrimination in turn not only exacerbates the difficulty of preventing infection but also runs counter to any educational and outreach efforts in this context.

11. It is, therefore, evident that practices of discrimination and stigmatization of infected persons are to be considered hazardous to public health. Consequently, the protection of human rights and the prevention of discrimination in the context of HIV/AIDS should constitute an integral part of public health policies for the prevention and control of HIV/AIDS.

12. Human rights have been a part of the debate on a common global response to AIDS at the United Nations from the very beginning. It has also long been the position of the World Health Organization (WHO), as the monitoring and implementing agency of the Global AIDS Strategy, that human rights must form an integral component of any response to the HIV/AIDS pandemic that is ravaging the globe. This is because human rights interface with HIV/AIDS in a number of critical ways. In the first instance, failure to protect human rights increases the risk of transmission of the disease. Prevention of transmission is a complex and delicate process of education and behaviour change regarding intimate and sometimes illicit behaviour. Prevention of transmission depends on people coming forward to learn how to avoid infection, how to practise safe sex, and how and why they should act responsibly. Coercive measures, such as mandatory testing, lack of confidentiality and segregation, drive people away from prevention education and health-care services and subvert this process of behavioural change.

13. Secondly, individuals and groups in society who are disadvantaged and/or do not enjoy the full exercise of their rights are particularly vulnerable to infection as they have limited or no access to HIV/AIDS-related education, prevention and health-care programmes. Such groups include women, children, minorities, migrants, indigenous peoples, men having sex with men, commercial sex workers and injecting drug users. These groups may have neither the information they need nor the ability to act on it so as to avoid infection. Infection among such groups rapidly diffuses to society at large.

14. Finally, discrimination against and stigmatization of persons already affected by HIV/AIDS (those infected, suspected of infection and their families and associates) greatly magnifies the tragic impact the disease has on their lives. Such discrimination is widespread. It not only violates the rights of those affected but also further disables them by limiting their access to employment, housing, health care and vitally needed social support systems.

15. Thus, the discrimination and stigma associated with HIV/AIDS both infringe on the rights and dignity of those affected and pose a serious public health threat to society. Since the late 1970s, over 17 million people have become infected with the HIV virus. By the year 2000, it is estimated that 40 million will be infected.

16. Until there is awareness of the importance of the connection between successful HIV/AIDS prevention and human rights, it is likely that Governments will continue to employ discriminatory laws and policies, and that third-party discrimination and stigmatization will also continue. Such awareness can only be created through monitoring, advocacy and education. At present, there is no systematic monitoring of HIV/AIDS-related human rights violations, as the major human rights monitoring groups have yet to include the issue as part of their ongoing reporting.

17. Furthermore, it is emphasized that beyond the rather limited concept of non-discrimination, there exists an inherently more positive obligation on the part of the international community and national Governments to ensure the respect and dignity of all human beings, including the enabling and creation of a supportive environment for HIV-infected persons and persons with AIDS, their families and relatives, fostering a spirit of tolerance and solidarity.

18. The human rights rationale advanced in the context of HIV/AIDS concerns some of the most basic provisions of international human rights standards. The right to life, which has been recognized to entail positive obligations on the part of the international community and Governments actively and effectively to protect human lives, is known to have been restricted on the grounds of public health considerations. In fact, the protection of public health has also been recognized as legitimate grounds for the restriction of human rights. Similarly, measures which limit privacy, the freedom of movement or individual liberty have also been dictated by needs to protect public health. In this connection, however, it is important to note that any kind of derogation from existing human rights standards may only be applied in situations where a specific law spells out the nature of the derogation, where the derogation is considered strictly necessary for the fulfilment of a strictly proportional (to the nature of the measure) and pressing objective. This is to say that the State would in effect have to prove public health justifications before it could derogate from any human rights standards.

19. In accordance with the mandate contained in Commission resolution 1994/49, this report outlines, in chapter II, the measures taken at the international level to protect human rights and prevent discrimination, including the existing international and regional legal standards, as well as the work done by international organizations. In this connection, it should be noted that, as far as existing international human rights standards are concerned, this report is limited to an overview of a wide variety of existing literature in this area. Secondly, the measures taken by international organizations to protect human rights and prevent discrimination which are referred to in this report are largely based on information received by the Secretary-General in response to his request for contributions and are, therefore, not exhaustive. It should be noted, however, that the Secretary-General has chosen to focus only on positive measures undertaken in the context of human rights and HIV/AIDS, so as to remain within the limits of the mandate. Furthermore, these measures are intended to serve as an inspiration to Governments and activists in the area and to show that even with small means and small-scale projects much can be achieved in the context of raising awareness and empowering the individual to fight for his or her rights.

20. In chapter III, examples of such positive measures undertaken at the national level are provided, based mainly on the responses to the Secretary-General's request for information.

21. In his conclusions and recommendations, as contained in chapter IV, the Secretary-General notes the relatively small number of measures actively promoting the protection of the human rights of HIV/AIDS-infected persons or persons with AIDS, especially as compared to existing legislation and other measures which actively restrict or in some cases deny, not in accordance with recognized criteria for exceptional circumstances, the human rights and fundamental freedoms of concerned persons.

II. MEASURES TAKEN TO PROTECT HUMAN RIGHTS IN THE CONTEXT OF HIV/AIDS AT THE INTERNATIONAL LEVEL

A. International and regional human rights instruments

22. Human rights in relation to health are covered by a wide spectrum of international instruments. In addition to the most basic provision contained in article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and requests States Parties to the Covenant to undertake steps to achieve the full realization of this right, including the prevention and control of epidemic diseases and the creation of conditions which would assure medical service and medical attention to all in the event of sickness, other international human rights instruments cover the prevention of discrimination, human rights in the administration of justice, employment and social welfare, progress and development, all of which relate to concerns raised by HIV/AIDS. 2/ Although there do not at present exist any international legal instruments dealing exclusively with HIV/AIDS, it is important to point out that the general guarantees concerning health and the other above-mentioned rights can be applied in the context of HIV/AIDS on the basis of the universally recognized non-discrimination principle. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1994/29, confirmed that "discrimination on the basis of AIDS or HIV status, actual or presumed, is prohibited by existing international human rights standards and that the term 'or other status' in non-discrimination provisions in international human rights texts should be interpreted to cover health status, including HIV/AIDS".

23. Furthermore, international human rights treaty bodies, responsible for the supervision and monitoring of these instruments through periodic reviews of States parties' report, are developing case law or jurisprudence in the interpretation of their respective instruments. These opinions and recommendations are important in the context of HIV/AIDS, because they define the application of human rights of a general nature within the particular context of HIV/AIDS.

24. The following analysis, 3/ although by no means exhaustive, highlights some examples of the links between internationally guaranteed human rights and the application of these rights in the particular context of the HIV/AIDS epidemic.

25. The right to privacy 4/ is widely provided for in international and regional human rights instruments. However, there exist several possible measures that would necessarily entail interferences with the individual's right to privacy, which the State concerned would need to justify under the established criteria. These measures include mandatory testing for HIV infection; compulsory registration of persons considered likely to be infected with HIV, but who have not been tested; mandatory collection, storage and processing by public authorities of personal information about those who are suspected of being infected or have been tested; making AIDS or HIV a

notifiable disease; disclosure of test results or of other personal information to third parties; criminalization of behaviour thought to be conducive to the spread of AIDS.

26. The right to liberty and security of person 5/ is unfortunately also often affected by national legislation, policies and directives in the context of HIV/AIDS. In order to determine whether the protection of the international human rights instruments applies to the deprivation of liberty, the types of measures taken and their implementation must be taken into account. For example, a lawful deprivation of liberty and a possible isolation imposed on a prisoner as a disciplinary measure will not be regarded as constituting independent deprivations of liberty. This type of measure might, however, raise questions with regard to the right not to be subjected to inhuman or degrading treatment. On the other hand, measures justified on the grounds of public health, such as compulsory quarantine or compulsory internment, would appear to involve a deprivation of liberty. Such measures would not only have to satisfy the test that they are not arbitrary but are taken on reasonable grounds and in accordance with a procedure established by law. Moreover, the State would have to establish, in the case of detention, that the individual concerned had the infection and that her or his detention was necessary for the prevention of its spread.

27. In this connection, WHO has repeatedly stressed that detention or segregation of any kind is not warranted for the prevention and control of the spread of AIDS. Furthermore, WHO recommends, within its strategy for the prevention of the spread of HIV, that persons suspected or known to be HIV-infected should remain integrated within society to the maximum possible extent and be helped to assume responsibility for preventing HIV transmission to others.

28. The right to freedom of movement, comprising various issues such as entry into a country, abode and movement within a territory, expulsion from a country and leaving a country, is provided for in article 13 of the Universal Declaration of Human Rights. 6/

29. There are, in international law, some basic considerations in connection with this right: the right to enter a country is confined to nationals of the States concerned; there is no express obligation upon States to let aliens enter their territory. However, in particular on the basis of the principle of non-discrimination and possible treaty obligations, some controls and restrictions are posed on States' ability to control entry for purposes of work, travel and immigration. The question that arises, therefore, is to what extent, if at all, a State might legitimately impose controls on entry into its territory of those who are HIV-infected, restrict their movement within the country or permit or require their expulsion from it.

30. For nationals, the right to enter is absolute and not subject to any restrictions. Consequently, a State cannot legitimately make entry into its territory of its own returning nationals subject to their taking an HIV test. It is also not the case that the State may impose compulsory HIV testing on all aliens as a condition for entering the country. Such a requirement could only be imposed in cases where the State could establish that it was necessary for the protection of public health.

31. In this context, the Secretary-General has recently received information concerning draft legislation in Russia which would indeed be in contravention of existing international human rights standards and, in particular, constitute an arbitrary interference with the right to privacy and the right to freedom of movement. On 11 November 1994, the Duma, the lower house of the Russian Parliament, passed draft federal legislation "On the prevention of the spread in the Russian Federation of disease caused by the human immunodeficiency virus (HIV infection)", which provides for compulsory testing of all foreigners and stateless citizens coming to or located in Russia, as well as of Russian citizens working in "certain" professions and for receiving "certain" types of medical assistance. Furthermore, the word "certain" is as of yet not precisely defined and, therefore, leaves a rather wide margin of interpretation.

32. In this respect, attention is drawn to the above arguments on the basis of which the State concerned is required to establish that these measures are taken on reasonable grounds for the protection of public health. Furthermore, it appears questionable whether the passing of such legislation would be in conformity with existing obligations of the State concerned undertaken through the ratification of international human rights instruments.

33. In addition, WHO has stated that since HIV infection is already present in every region and in virtually in every major city in the world, even total exclusion of all travellers (foreigners and citizens travelling abroad) cannot prevent the introduction and spread of HIV. 7/

34. The protection against expulsion from a country afforded by international human rights law is more limited and differs in certain significant aspects between the various instruments. 8/ As regards the protection afforded to aliens, most provide that an alien lawfully in the territory of a State may be expelled only in pursuance of a decision reached in accordance with the law. Furthermore, the International Covenant on Civil and Political Rights provides for the alien to be given the opportunity to submit reasons against her or his expulsion and to have the case completely reviewed, the public health exception not being a reason for the non-application of the safeguards.

35. According to information submitted to the Secretary-General by one Government, out of 27 HIV-positive cases so far detected in that country, "one of them was an expatriate and sent back to his home country, two others have already died. There is no report of human rights violations in any one of these cases". According to the argument reported in the preceding paragraph, however, the expulsion of expatriates on the grounds of seropositivity must occur in accordance with a decision reached by law. It is clearly evident from this example that human rights considerations simply are not taken into account in many countries when, for example, a person is expelled on the grounds of protecting public health.

36. In connection with travel restrictions and HIV/AIDS, WHO has promulgated a policy of non-sponsorship of international conferences in countries which impose short-term travel restrictions. This policy has been adopted throughout the United Nations system. Furthermore, WHO is at present developing policy on long-term travel restrictions.

37. As far as the human right to marry and found a family 9/ is concerned, a policy of mandatory premarital HIV testing, coupled with the denial of a marriage licence if either person prove to be infected, would be a measure interfering with human rights as protected by the international human rights instruments. The same applies to the prohibition of the marriage of persons known, or suspected, to be infected with HIV. Furthermore, owing to the increase in sexual activity outside of marriage, the argument that prohibiting marriage would be an effective means of preventing either sexual or perinatal transmission of the HIV virus is not sustainable.

38. International human rights instruments provide that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. 10/ ILO Convention No. 111, entitled Convention concerning Discrimination in Respect of Employment and Occupation (1958), in its article 1 (a), defines the term discrimination in respect of employment and occupation as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". States parties have, however, the possibility, after consultations with representative employers' and workers' organizations, to add to the list enumerated in article 1 (a) any other grounds on which discrimination is prohibited, such as, for example, seropositive status.

39. In addition, the Committee on Economic, Social and Cultural Rights has interpreted the relevant provisions of the Covenant to include an effective guarantee against arbitrary dismissal as an integral element of the right to work. 11/

40. Unfortunately, misconceptions about HIV and the groundless fear of contagion often give rise to discrimination against workers infected or suspected of being infected with HIV. Indeed, it could be said that most of the crises relating to AIDS in the workplace are an invasion of workers' privacy. The employer has no reason to require staff or job applicants to undergo HIV screening, and even less to divulge anyone's HIV status or take it into account in decisions concerning employment.

41. The activities conducted by the International Labour Office (ILO) over the last 10 years to promote and protect human rights and prevent HIV/AIDS-related discrimination are based on a number of international labour conventions and recommendations, in particular the ILO Convention (No. 111) mentioned above; the Convention concerning Termination of Employment at the Initiative of the Employer (No. 158), 1982; the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (No. 159), 1983; the Occupational Health Services Convention (No. 161) and Recommendation (No. 171), 1985; and the Convention concerning Employment and Conditions of Work and Life of Nursing Personnel (No. 149), 1977.

42. While no international labour convention or recommendation at present deals expressly with HIV/AIDS, the provisions of some of these instruments can be applied to the problem and suggest both the preferable way of reaching consensus on an HIV/AIDS policy (the instruments aimed at promoting consultations and negotiations) and the scope of such a policy (the provisions

of the above-mentioned conventions and recommendations; ILO instruments on social insurance and social security are also relevant to the HIV/AIDS problem).

43. Applied judiciously, the principles stated in a number of international labour conventions and recommendations and in the WHO/ILO Joint Declaration on AIDS and the Workplace afford broad protection of HIV-infected people and people with AIDS against discrimination and the violation of their fundamental rights in regard to employment and occupation. Respect for human rights and an effective strategy to combat AIDS are two inseparable concepts.

44. There is nothing, therefore, to prevent the criteria applicable to HIV infection and AIDS from being added to the list of prohibited reasons for discrimination in employment and occupation. A more rational approach might be to include among the prohibited reasons for discrimination a provision broad enough to encompass HIV and AIDS without implying privileged treatment for the victims compared with people with other infections which likewise often allow an occupational activity to be continued for a certain time before causing incapacity and premature death at a point that is impossible to predict. Thus, a person's physical or mental health, disabilities in the broad sense of the term, deficiencies and medical history have been included as prohibited criteria for discrimination in the laws and collective agreements of several countries.

45. Furthermore, in the context of ILO Convention No. 158, if an HIV-infected worker remains capable of performing his work and his conduct at work is irreproachable, the presence of the virus should not in itself constitute a "valid reason" for termination in the meaning of article 4 of the Convention, which provides that "the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service". Similarly, the groundless fears to which the presence of such a person at the workplace may give rise among colleagues or customers cannot be regarded as a reason for termination either on personal grounds or with reference to the "operational requirements of the undertaking".

46. Another example is article 2 of ILO Convention No. 159, which requires the Member State ratifying the Convention to implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. The periodic review clause is relevant to HIV/AIDS by virtue of the need to consider these new phenomena from the perspective of incapacity for work. The policy which Member States are required to formulate and implement under article 2 must be "based on the principle of equal opportunity between disabled workers and workers generally"; at the same time, "special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers" (art. 4).

47. Certain provisions of these instruments are also intended to protect workers' privacy. The Occupational Health Services Recommendation (No. 171) states that provisions should be adopted "to protect the privacy of the

workers and to ensure that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests" (para. 11 (2)).

48. In that regard, the WHO/ILO Joint Declaration on AIDS and the Workplace 12/ protects the right of employees to confidentiality regarding all medical information, including HIV/AIDS status (item 2). The fears of their colleagues and discrimination by their employers prevent a large number of HIV-infected people from seeking the information, treatment and assistance they need. It is also significant that the WHO/ILO Joint Declaration states that HIV/AIDS screening as part of the assessment of fitness to work should not be required (para. 1 and item 1).

49. Furthermore, in accordance with ILO standards and international human rights instruments, the United Nations Secretariat has prepared a document analysing the impact of HIV/AIDS on United Nations personnel and operational policy (ACC/1991/DEC/10 and ACC/1993/PER/R.6, annex III). This document encourages all United Nations bodies to, inter alia, develop and implement an active staff education strategy for HIV/AIDS and to make available voluntary testing with pre- and post-counselling and assured confidentiality to all United Nations staff members and their families. These guidelines indicate that no testing for HIV infection should be permitted with respect to any health insurance scheme. Furthermore, with regard to terms of appointment and service, HIV infection is not taken in itself to constitute a lack of fitness to work and no HIV screening of candidates is required for recruitment. Similarly, HIV infection or AIDS should not in itself be considered a basis for termination of employment, and should fitness to work be impaired by HIV-related illness, then reasonable alternative working arrangements should be made.

50. Furthermore, in the context of HIV/AIDS respect for the right to education; 13/ the right to an adequate standard of living, including housing; 14/ and the right to social security, assistance and welfare, 15/ should be particularly carefully considered.

51. For example, a health policy prohibiting children infected with HIV from attending school not only cannot be justified on public health grounds but also may run counter to information and education efforts on HIV/AIDS which are integrated into school curricula. With regard to the right to adequate housing and to social security, assistance and welfare, the right to equal protection of the law, 16/ derived from the principle of non-discrimination, is a powerful complement to the protection of the human rights of people with HIV/AIDS. It follows that an individual with HIV/AIDS may only be subjected to differential treatment in any field regulated and protected by law if it can be established that the distinction has a legitimate aim and reasonable justification and that the means employed are proportionate to that aim.

52. In addition to the international and regional standards, as well as their monitoring bodies, that provide for the protection of the human rights of persons with AIDS, the Commission on Human Rights and its Sub-Commission have been concerned with the issue of prevention of discrimination in the context of HIV/AIDS. Since 1988, the Commission has regularly adopted resolutions on HIV/AIDS-related discrimination. In 1990, it approved the recommendation of

the Sub-Commission to appoint Mr. Luis Varela Quirós, for a period of three years, as Special Rapporteur on discrimination against HIV-infected people or people with AIDS.

53. The Special Rapporteur submitted his preliminary report to the Sub-Commission in 1990 (E/CN.4/Sub.2/1990/9), his progress report in 1991 (E/CN.4/Sub.2/1991/10), as well as another report in 1992 (E/CN.4/Sub.2/1992/10).

54. In his final report to the Sub-Commission in 1994 (E/CN.4/Sub.2/1994/9), the Special Rapporteur described the global AIDS situation, the importance of preventing HIV/AIDS-related discrimination, discriminatory practices and legal policy frameworks for protection against discrimination. He provided a synopsis of replies received from Governments, United Nations specialized agencies and bodies, intergovernmental and non-governmental organizations, containing information on legal and policy framework introduced in response to AIDS. The Special Rapporteur concluded that strategies to prevent HIV/AIDS-related discrimination needed to combine education with legal protection against discrimination.

55. In his conclusions and recommendations the Special Rapporteur emphasized that discrimination against HIV-infected people or people with AIDS is neither admissible under international human rights instruments nor justified as an appropriate means of policy for controlling the AIDS pandemic. In fact, discriminatory practices can be eradicated only by means of national and international education programmes that create a genuine climate of respect for human rights and reject any discriminatory policy against socially vulnerable groups.

56. At its forty-sixth session, in August 1994, the Sub-Commission had before it a report of the Secretary-General (E/CN.4/Sub.2/1994/8), which briefly outlines the progress made within the United Nations system with regard to a joint and cosponsored United Nations programme on HIV/AIDS.

57. This joint United Nations programme, which is expected to become functional in January 1996, is aimed at eliminating duplication of efforts by the United Nations system in the field of HIV/AIDS; ensuring day-to-day interaction and the integration of ideas and approaches systemwide and beyond; assisting Governments in coordinating the efforts of various external support agencies; joint and coordinated fund-raising at global and national levels; and achieving consistency with the coordination mechanisms adopted by the General Assembly in line with the reform of the United Nations system in that regard.

58. Concerning the particularly vulnerable status of women in the context of HIV/AIDS, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted, in 1990, general recommendation No. 15, which recommends, inter alia, that programmes to combat AIDS should give special attention to the rights and needs of women and children, and to the factors relating to the reproductive role of women and their subordinate position in some societies which make them especially vulnerable to HIV infection; and that States

parties ensure the active participation of women in primary health care and take measures to enhance their role as care providers, health workers and educators in the prevention of infection with HIV.

59. In 1990 also, the Commission on the Status of Women adopted its resolution 35/5, entitled "Women and the prevention and control of acquired immunodeficiency syndrome (AIDS)", in which it invited member States to evaluate and strengthen their policies and programmes for the control of AIDS for the benefit of women through, inter alia, the coordination of such programmes with other programmes for women, in particular, programmes for family planning, maternal and child health, school education and the control of sexually transmitted diseases.

B. The work of international and regional organizations

60. In view of the World Health Organization's numerous activities in the promotion and protection of human rights and prevention of discrimination in the field of HIV/AIDS, and its role as the implementing and coordinating agency for the Global Strategy on AIDS, the World Health Organization Global Programme on AIDS (WHO/GPA) and the Global Management Committee Task Force on HIV/AIDS Coordination (WHO/GMC Task Force), have contributed extensively to the present report.

61. The Global AIDS Strategy has achieved a precedent in the history of responding to disease by incorporating the consideration of human rights. The World Health Assembly has affirmed 17/ that human rights standards fully apply in the context of HIV/AIDS, stressing:

(a) The responsibility of the State to safeguard the health of everyone;

(b) The vital importance of respect for the human rights and dignity of HIV-infected people and people with AIDS to the success of AIDS prevention and control;

(c) The avoidance of discriminatory action against and stigmatization of HIV-infected people and people with AIDS.

62. WHO/GPA has promoted HIV/AIDS-related human rights through standard-setting, monitoring, advocacy, training and research, and the provision of technical and legal advice to States with regard to their national AIDS programmes and HIV/AIDS-related legislation. In terms of standard-setting, WHO/GPA has issued, after various consultations, policies and guidelines concerning human rights and HIV/AIDS, HIV testing, partner notification and HIV/AIDS in the workplace, sports and prisons. In 1995, the following issues and their human rights components will be considered further: HIV testing and HIV in the workplace, in migration and in the military.

63. WHO/GPA also monitors discriminatory legislation, policies and practices at the national level, by using a variety of sources such as medium-term plans for national AIDS programmes, external national AIDS programme reviews, staff missions, the media and reports from regional offices, country staff, community-based organizations and non-governmental organizations and

persons living with HIV/AIDS. Furthermore, WHO/GPA is currently developing indicators which will make possible the measuring of progress in reducing HIV/AIDS-related discrimination at the national and local levels. WHO/GPA is also establishing a country-specific human rights database, comprising information from various sources to indicate actual or potential areas of concern, including information on positive and negative measures taken in the area of human rights. Subsequently, those areas of concern will be addressed by intervention and/or advocacy through various channels, such as regional offices and missions.

64. WHO/GPA is also initiating a research project on the determinants of HIV/AIDS-related discrimination, stigmatization and denial, focusing on the nature and process of HIV/AIDS-related stigmatization in developing countries and the implications of these prevention and care programmes.

65. Legal advice is also given to Governments on those aspects of their legislation and practice which constitute areas of concern. WHO/GPA reviews draft and implemented HIV/AIDS-specific legislation or health legislation which includes HIV/AIDS-related provisions and provides comments and recommendations when appropriate. Information on legislation comes from a number of sources, including Governments, WHO regional offices, non-governmental organizations and individuals.

66. Furthermore, the WHO Health Legislation Unit has produced and regularly updates the "Tabular information on legal instruments dealing with HIV infection and AIDS". This compilation is distributed widely to Governments, universities, institutions, academics and non-governmental organizations. In this connection, WHO/GPA intends to develop HIV/AIDS-specific model legislation based on non-discrimination and respect and promotion of relevant human rights principles, which may serve as a basic legal framework for Governments seeking to adapt existing legislation or implement new legislation aimed at the prevention of HIV/AIDS.

67. WHO/GPA also supports national and regional legal and ethical networks sponsored by UNDP, as well as networks of persons living with HIV/AIDS and recognizes, in accordance with WHA resolution 42.34 of 1989, the importance of involving non-governmental organizations and persons living with HIV/AIDS in the design and implementation of HIV/AIDS responses, including responses against discrimination. It has become increasingly apparent that action and advocacy on issues of law, ethics and human rights at local and national levels by institutions, individuals, non-governmental and community-based organizations and persons living with HIV/AIDS is essential to change attitudes and address stigmatization, discrimination and intolerance. It is hoped that such networks will be able to provide the international community with continuous and updated information on the extent and content of HIV/AIDS-related discrimination, as well as examples of concrete means by which to address it.

68. Recognizing the importance of basic human rights knowledge among all those active in the field of HIV/AIDS, WHO/GPA has conducted a number of human rights training seminars at WHO headquarters to enable its staff to identify areas of concern within their activities. WHO/GPA intends to continue this activity and further aims at developing human rights training materials and training programmes for staff, national AIDS programme managers, relevant

ministries (for example, of health, the interior and justice), law enforcement officers, immigration officials, health-care workers and non-governmental and community-based organizations. In order to enable reviewers and others involved in national AIDS programmes to integrate human rights concerns into their programmes, WHO/GPA is developing a human rights check-list and aide-mémoire which will be circulated for use by AIDS programme planners and reviewers.

69. Finally, WHO/GPA has established contacts with United Nations human rights treaty bodies, such as the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights so as to bring HIV/AIDS-related human rights issues to the attention of all experts and Governments in the context of reporting procedures.

70. The WHO/GMC Task Force on HIV/AIDS Coordination was established in 1993 to examine ways and means to improve collaboration and coordination between different types of organizations involved in HIV/AIDS work, both at the international and national levels. On the basis of information collected on obstacles to collaboration and coordination, the GMC Task Force has produced guiding principles which describes conditions that should be fulfilled to provide a good basis for collaboration and coordination.

71. In addition, the GMC Task Force is currently developing an information system on HIV/AIDS activities supported by external development assistance. Data has been provided by organizations of the United Nations system, bilateral donors and a limited number of non-governmental organizations and national AIDS programmes. The information which is available at present in the database shows that external assistance to HIV/AIDS work executed by Governments, non-governmental organizations or other institutions is often provided in a broad context and the different HIV/AIDS components are not specified. The policies and programmes for the protection of human rights and prevention of discrimination of the executing agency are important elements for consideration in external assistance programmes. Yet it has not been possible to document principles and processes within development assistance agencies aimed at protecting human rights in the fight against the HIV/AIDS epidemic.

72. With a view to capacity building in the area of law, ethics and HIV in developing countries, the United Nations Development Programme, in collaboration with national Governments, has sponsored intercountry consultations, with participants from Governments, public authorities, the legal community and non-governmental organizations. These consultations have formed national and regional ethical, legal and human rights networks.

73. One of the principles underpinning these networks is that, unless there exists a firm commitment within each country to integrate ethical, legal and human rights considerations into the overall response to the HIV/AIDS epidemic, then compliance with international standards risks being token at best. It is also argued by some that human rights monitoring is an inadequate framework for dealing with an epidemic that requires change in the behaviour of individuals and communities. The UNDP networks, therefore, work on the basis of a compelling need to find ways of engendering such an approach from within communities. The objective of the initiative is to make the critical

links between people and organizations within and between countries, so as to act as a catalyst for sound ethical policies on HIV/AIDS and to generate advocacy by and on behalf of people affected in different countries.

74. These regional networks reflect the objectives of the national networks of which they are composed, working in partnership with already existing national, regional and international groups and organizations in related areas. Network members include lawyers, ethicists, people living with HIV/AIDS, representatives of national AIDS programmes, Governments, non-governmental and community-based organizations and women's groups. Regional networks reinforce national networks and provide a forum for discussion and exchange of experience. At present, there are three such networks, the Latin America/Caribbean network and the Asian and African networks.

75. Most recently, UNDP organized an African Inter-Country Consultation on Ethics, Law and HIV, which, in the Declaration at Dakar, of 1 July 1994, affirmed that any action, whether personal, institutional, professional or governmental, in response to the HIV epidemic, should be guided by the principles of, inter alia, non-discrimination, confidentiality and privacy, ethics in research and prohibition of mandatory HIV testing.

76. Some other examples of measures taken by GMC Task Force constituencies which target the building of a supportive environment in the area of ethics, human rights and HIV within affected communities are the following:

(a) An AIDS Consortium in South Africa focuses on legal and human rights issues and promotes the principles of non-discrimination against people living with HIV/AIDS through policy, advocacy, lobbying, information exchange and networking. Financial support is received from donor agencies in the Netherlands and in the United States;

(b) The Humanistic Institute for Cooperation with Developing Countries (HIVOS) is funding activities, including information dissemination on HIV/AIDS, counselling, human rights protection and network development, carried out by the non-governmental organization called "Positive People" in Goa, India. HIVOS is also extending financial support to a non-governmental organization in Kuala Lumpur, "Pink Triangle", which has created an AIDS hotline, and a documentation centre including information on the protection of human rights in the context of HIV/AIDS;

(c) The Interchurch Agency for Development Cooperation (ICCO) has supported the "Comité d'action pour les droits des femmes et des enfants" in Mali in carrying out educational activities regarding human rights and HIV/AIDS.

77. ILO policy on HIV/AIDS and the workplace forms an integral part of the ILO mission to promote social justice and protect workers against violations of their rights and fundamental freedoms in the field of employment. The protection of HIV-infected people and people with AIDS against discrimination in employment is a very important component of the ILO programme of action on HIV/AIDS. The other components of this programme are: protection of the health of workers in areas of employment particularly exposed to AIDS, such as

health professionals and maritime workers, the promotion of public information and awareness concerning HIV/AIDS through the working environment, i.e. undertakings and employers' and workers' associations and, lastly, study of the impact of HIV/AIDS on the labour market and social security costs.

78. This policy was defined in consultation with WHO following the international meeting on AIDS and the workplace organized jointly by WHO and ILO at Geneva in 1988. The conclusions and recommendations of an international meeting on AIDS were set out in a consensus statement on AIDS and the workplace.

79. This document, entitled "WHO/ILO Joint Declaration on AIDS and the Workplace" states, inter alia, that pre-employment HIV/AIDS screening as part of the assessment of fitness to work is unnecessary and should not be required. Pre-employment screening for insurance or other purposes raises serious concerns about discrimination and merits closer and further study. The Declaration further stipulates that, in order to maintain a mutually understanding climate to protect persons affected by, or perceived to be affected by HIV/AIDS from stigmatization and all forms of discrimination in the workplace, information and education are essential. It should be recognized that the workplace can play a decisive role in the prevention of the spread of HIV by providing information and relevant assistance which might be needed by workers, for example when taking conscious decisions concerning their sex life or how to show solidarity and respect vis-à-vis their colleagues, neighbours and friends affected by HIV/AIDS.

80. Indeed, ILO notes that work in the great majority of occupations and occupational situations presents no risk of the contraction or transmission of HIV, either between workers, from workers to customers or from customers to workers. However, for a minority of workers - personnel whose task is to provide health care - the risk of contracting or transmitting HIV infection may well be inherent to the occupational activity. Such workers will therefore have to take precautions for their safety and health. It is important to assess carefully the risks associated with certain functions in order to identify those which are at risk and those which are not, and to define clearly those for which precautions must be taken.

81. The general machinery for supervising and monitoring international labour standards comprises two main bodies: the Committee on the Application of Standards of the International Labour Conference and the Committee of Experts on the Application of Conventions and Recommendations. The latter, with technical support from the International Labour Standards Department, has the task of considering government reports and, where appropriate, comments by employers' and workers' organizations from the legal standpoint.

82. The regular activities of monitoring the relevant international instruments to protect HIV-infected people and people with AIDS against discrimination in employment are supplemented and reinforced by practical action to provide information and education concerning HIV/AIDS prevention and by studies and research on the impact of AIDS on workers' rights and on employment and economic and social development.

83. Information and education activities relating to the prevention of AIDS and its adverse effects on the enjoyment of human rights in employment are organized by various ILO services within periodic seminars and technical cooperation programmes in several fields, particularly workers' education, women and development, population and social and family welfare, equality of opportunity and treatment, and working conditions and the working environment.

84. The United Nations Population Fund (UNFPA) provides support for HIV/AIDS prevention and care activities in line with national AIDS control policies and programmes, within the scope of the WHO/GPA global strategy for HIV/AIDS prevention and control. These activities are integrated into ongoing programmes and projects in the population sector, particularly maternal and child health service delivery and information, education and communication programmes and projects. UNFPA specifically recognizes that it is essential that development and health strategies ensure that women have more control over their lives, their reproductive and sexual health and their fertility.

85. Furthermore, UNFPA actively supports and participates in an inter-agency venture, namely the ongoing series of regional HIV/AIDS workshops of the Joint Consultative Group on Policy (UNDP, UNICEF, WFP, IFAD and UNFPA), which focuses on the training of trainers in the workplace. The workshops cover basically three areas, namely technical/medical information, training of trainers and United Nations personnel policy on HIV/AIDS. The purpose of the workshops is to extend awareness and knowledge of HIV/AIDS to country-level staff members of the five organizations through trainers' workshops and informal staff networks of support, so that the participants, upon return to their duty station, run workshops and act as information focal points on HIV/AIDS to United Nations staff and their families in the field. Three such workshops have been held so far: in Harare (March 1993), Dakar (January 1994) and Bogota (July 1994).

86. The Office of the United Nations High Commissioner for Refugees (UNHCR) has established a working group on AIDS, which has formulated "Policy and Guidelines regarding Refugee Protection and Assistance and Acquired Immune Deficiency Syndrome (AIDS)", and keeps the issue under continuous review. The Policy and Guidelines were drawn up in response to cases where Governments started to consider the need for testing for AIDS and screening for purposes of admission of asylum seekers and resettlement of refugees. In this context, the UNHCR Policy and Guidelines take as their basis the argument that refugees are not a group especially at risk for HIV infection/AIDS and should therefore not be subjected to specific measures unless these are applied to all residents, citizens and refugees alike, in the country concerned. Mandatory mass screening of refugees and asylum seekers in the context of admission, asylum, resettlement and voluntary repatriation are, therefore, not applicable. UNHCR further advocates that screening must in no cases lead to refoulement or denial of voluntary repatriation. In addition, national measures carried out to combat AIDS and to prevent the spread of the HIV virus, in so far as they have an impact on refugees and asylum seekers, must only be applied in the context of the overall objectives of the international system with regard to this group of people, namely protection and solutions. The UNHCR policy, therefore, is to ensure that local refugee populations, where necessary, benefit from national AIDS programmes and contribute to the refugee component of those programmes.

87. UNHCR has also pointed out that in every refugee situation in which AIDS or HIV infection is an issue, both human rights and protection principles oblige States and UNHCR to cooperate in order to avoid individual tragedy. This involves recognition of the fact that exclusion is no solution, and that responses must be geared to the dual objectives of combating the disease and protecting the refugee and his or her rights. These objectives also entail the highest degree of inter-State and inter-agency cooperation.

88. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has, since 1988, undertaken activities in the field of HIV/AIDS, through its Programme of Education for the Prevention of AIDS. The Programme is based on the notion that preventative education against AIDS, not only by imparting knowledge but as a means of changing attitudes and behaviour concerning HIV/AIDS, goes hand in hand with the ethics of human relations and with the struggle for human rights.

89. The current approach of UNESCO in education for the prevention of AIDS is the initiation and organization of a series of high-level Regional Planning Seminars on AIDS and Education within the School System to encourage education and training policies to take into account the impact of HIV/AIDS and the vital role of school-based preventative education. This approach includes capacity-building in the areas of educational planning, curriculum development and teacher training, facilitating collaboration between education and health sectors and fostering the development and implementation of national action plans in the field of school-based AIDS education.

90. According to information received, the United Nations Interregional Crime and Justice Research Institute (UNICRI), within its Drug Abuse Comprehensive Project, collects and disseminates scientific and legislative documentation in the area of prevention and control of drug abuse and related phenomena, including AIDS. Scientific articles, national and international legislation, as well as tools for prevention campaigns, videos and posters on HIV/AIDS prevention are collected in the UNICRI library database and are available for consultation on site.

91. The Inter-Parliamentary Union, at its 87th Inter-Parliamentary Conference (Yaoundé, April 1992) adopted a resolution entitled "The pandemic nature of acquired immune deficiency syndrome (AIDS)", which urged all Governments to ensure protection of the human rights and civil liberties of people infected, or believed likely to be infected.

92. The member States of the Organization of African Unity (OAU), in July 1992, adopted the Dakar Declaration on the AIDS Epidemic in Africa, which identifies prevention as the key to slowing the spread of AIDS in Africa and containing its ultimate impact as a national responsibility and international challenge. Whereas the Declaration refers to a number of measures to be taken in the context of the epidemic, such as increased budgetary allocations, political commitment to mobilizing society and planning for the care of people with HIV infection and AIDS, it should be mentioned that no specific reference is made to the protection of all human rights and fundamental freedoms of the individual.

III. MEASURES TAKEN TO PROTECT HUMAN RIGHTS IN THE CONTEXT OF HIV/AIDS AT THE NATIONAL LEVEL

93. At the outset, it is notable that many of the replies received in response to the Secretary-General's note verbale simply indicated that the Government in question fully agreed with the contents of Commission resolution 1994/49 and applied no discriminatory measures violating the human rights of the persons concerned. However, references to positive measures undertaken to protect these rights were generally not made and, therefore, are presumed not to exist.

A. National policy and legislation

94. One Government indicated that the legislation in force in the country in regard to HIV/AIDS prohibits defamation or discrimination against persons infected with HIV/AIDS, and that deterrent measures are taken to prevent practices likely to bring them and their families into social disrepute. However, no further details were provided.

95. Other replies indicated that, although the concept of non-discrimination may be recognized in the national AIDS programmes, no specific national legislation has been adopted to actively safeguard the human rights of infected individuals.

96. The Government of Zimbabwe informed the Secretary-General that the AIDS Coordination Programme under the Ministry of Health and Child Welfare has adopted a policy of non-discrimination, non-stigmatization and respect for human rights in relation to HIV/AIDS. Consistent with this policy, a team of consultants comprising a legal expert, a medical practitioner, a communications expert, a sociologist and an economist has been engaged to assist in compiling comprehensive policies on HIV/AIDS and to make recommendations on areas for requisite legislation. The Zimbabwean policy conceptual framework outlines a set of principles which will guide the formulation of policy and programme responses in the current environment. These principles stipulate, inter alia, that "coping strategies of communities must be central to the national response and community-based organisations need to be instrumental in ensuring human survival and development", and that "people infected with HIV retain the right to participate in society without discrimination, and have the same right to comprehensive and appropriate health care, income support and community services as other members of the community". The Zimbabwean experience is an example of applying a multidisciplinary approach to the issue of HIV/AIDS. Not only does the complex nature of the problem require a public health response but law and ethics are important influences to be considered in order to effectively control and prevent the epidemic, whilst at the same time being able to guarantee the human rights and fundamental freedoms of the infected individuals and their families.

97. In the Netherlands, after a significant political debate on whether, in certain cases, people should be tested for HIV infection, focusing mainly on policies regarding admitting people with HIV infection to life insurance and employment disability insurance schemes and policies regarding job appointments, the Government is in favour of establishing a "code of conduct"

which would include a number of provisions to protect the legal position of the applicant and a complaints procedure. This "code" is to be drawn up by insurance companies themselves, for approval by the Government.

98. However, with regard to national legislation, as well as to international standards, it should be borne in mind that although one country might not yet have HIV/AIDS specific legislation in force, the protection granted under health legislation in general also applies to the particular instance of HIV/AIDS. In Slovenia, for example, the Law of Health Care provides for equality in access to health care (not HIV specific), obligatory consent before any medical procedure is undertaken (not HIV specific) and confidentiality (not HIV specific), which are all relevant principles to be safeguarded in connection with the epidemic.

B. Institutional structures

99. According to information received, in many countries national committees have been established to implement relevant legislation and directives which are designed to safeguard the right to privacy and integrity of the persons concerned. In many cases, however, these national committees are barely functional owing to inadequate financing.

100. In Canada, as part of the national AIDS strategy, an initiative was taken to establish a Federal Interdepartmental Committee on Human Rights and AIDS, with the Department of Justice as chair and the centre of responsibility lying with the Public Law Branch, Human Rights Law Section. The Committee draws on the expertise of all federal departments and monitors the evolution of public health policy in relation to HIV/AIDS and human rights. The Committee has already undertaken various studies on complex human rights issues relating to HIV/AIDS, such as the revision of the Treasury Board policy on HIV/AIDS in the workplace, the question of HIV-antibody testing of persons accused or convicted of sexual assault and the human rights issues relating to the use of criminal law to deal with HIV/AIDS-related actions.

101. In Mexico, the National Human Rights Commission, set up in June 1990, acts as a body to which persons considering themselves to be discriminated against because they are seropositive or have AIDS may have recourse. The National Human Rights Commission is also currently conducting a study for the period May 1994 to May 1995 with a view to identifying the various types of discrimination committed against people with HIV/AIDS. In addition, a brochure has been prepared by the National Commission entitled "Human rights of people with HIV or AIDS who are deprived of their freedom". This leaflet gives general information on the epidemic, its prevention and control, as well as listing the rights of the individual with HIV/AIDS, such as the right to be free from discrimination, the right to privacy and confidentiality, the right to freedom of movement, etc.

102. The measures taken by the Croatian Commission for the Prevention of HIV/AIDS, within the Ministry of Health, in implementing certain provisions of the national programme on AIDS have been made subject to approval by a so-called "ethics commission" of the Ministry of Health, so as to ensure the effective protection of human rights within the context of preventative measures to fight the epidemic.

C. Education and information programmes

103. Frequently, in the context of HIV/AIDS, so-called "high-risk groups" are identified, generally on the basis of sexual preference, lifestyle and racial or national origin, whose individual rights and freedoms may be affected on a large scale by virtue of their denial or discriminatory application (such as imposed testing or restriction of movement or activities) due to their apparent high-risk contamination factor. Unfortunately, most measures taken with regard to these identified groups are restrictive or discriminating in nature and generally do not focus on the prevention and protection needed to make these groups "lower risk" (through changes in behaviour, for example).

104. One positive example is that of prison training schemes undertaken in New Zealand, where the prevention of the transmission of HIV poses a particular challenge to the managers of penal institutions. The Government has a two-pronged approach. Firstly, special sessions on HIV/AIDS for all prison officers are part of staff education programmes; HIV infection guidelines have been transmitted to each institution along with a training video. Secondly, inmates are offered health education on a voluntary basis, which includes information about HIV/AIDS. Prisoners are informed about the needle exchange scheme which operates outside prisons and the techniques of cleaning drug injecting equipment.

105. The Government of Australia has implemented the broad principles of its national HIV/AIDS strategy that the law should complement and assist education and other public health measures through a recent community anti-discrimination campaign called "HIV doesn't discriminate ... people do", which was launched in 1993 and updated in June 1994. This campaign aims to reduce discriminatory attitudes and behaviour towards people living with HIV/AIDS. It consists of television advertisements and print commercials, also translated for use in the ethnic press, reinforcing the safety of everyday social contact, using affected people instead of actors to destigmatize people living with HIV/AIDS, by showing them as, inter alia, someone's friend, relation, neighbour or partner.

106. Two other information dissemination projects funded by the Government of Australia are also of interest. The first informs people living with HIV/AIDS of what constitutes discrimination, their rights and responsibilities and available avenues of redress. The second targets health workers to assist them in better understanding what constitutes discrimination and in developing appropriate policies and practices which enhance quality of care.

107. In Brazil the Candido Mendes College in Rio de Janeiro introduced, in August 1992, a voluntary course entitled "AIDS - legal approaches" into their law curriculum. 18/ The course aims to help influence public policy by sensitizing students to the legal problems encountered by persons living with HIV/AIDS, as well as to teach students how to defend the rights of people in need. The course curriculum covers issues such as civil law, involving the possibility of civil liabilities (for example, civil suits against blood banks); contract law (for example, action against private health insurance companies refusing to cover HIV/AIDS-related treatment expenses); family law; inheritance law; labour law (for example, cases involving dismissal on the grounds of HIV/AIDS infection); criminal law (cases involving intentional

transmission of HIV); as well as violations of basic human rights law. In addition, law students opting for this course gain practical experience in providing legal assistance in lawsuits.

108. Soroptimist International, a non-governmental organization in consultative status with the Economic and Social Council, reported on the various activities undertaken by its national affiliates in two programme areas, "Health and human rights" and "Status of women", which include the promotion of education, information and research with regard to HIV/AIDS, the support of human rights of patients and families affected by HIV/AIDS, as well as advocacy of the participation of women in prevention and control of HIV/AIDS. More specifically, Soroptimist International is currently drafting its next quadrennial project (1995-1999), entitled "AIDS education and alternatives to prostitution for women in northern Thailand", which would entail the provision of AIDS education and training for northern Thai women in income-generating pursuits in order to improve their status as women and increase their awareness of their human rights and thereby to decrease their vulnerability to HIV/AIDS infection.

D. Other measures

109. The Government of Iraq, in its response, indicated that special care is made available to persons with HIV/AIDS, as well as their families. They are provided with financial, social and educational support and periodic meetings are organized for such persons and their families in order to discuss and help to solve their problems and avoid any measure that might lead to social discrimination against them and their families.

110. The Government of China reported that, in June 1994, the Ministries concerned organized a symposium in Beijing on the right way to prevent and control AIDS in China. At this symposium, experts and academics called upon society to do more to protect the rights of people living with HIV/AIDS. The Government was also called upon, through legislative and other administrative steps, to protect, inter alia, the human rights to life, privacy, work, social welfare and medical treatment of individuals concerned. "These appeals and suggestions came to the attention of the Ministries concerned and are by degrees being implemented and put into practice."

111. A conference of health ministers of the Latin American countries on the subject "Health and development: AIDS, a social and economic question" was held at Brasilia in May 1993. The Conference adopted many conclusions and recommendations, including some interesting ones made in connection with the prevention of discriminatory restrictions on international travel. The Conference recommended, inter alia:

(a) The elimination of any requirement regarding serological tests for HIV infection as a condition for obtaining any type of visa (work, temporary residence, transit, tourist and student visas);

(b) Development of research into population movement patterns, epidemiological studies of behaviour and social studies designed to establish

HIV/AIDS/STD transmission patterns, and identification of community support mechanisms and social impact in communities marked by substantial movements of persons and in frontier areas;

(c) The conclusion of bilateral and/or multilateral agreements between countries in the Latin American region which guarantee medical assistance for persons coming from other countries in the region, to the extent consistent with the laws and assistance facilities of each country;

(d) Development and implementation of information, education and communication activities to prevent infection by HIV and other sexually transmitted diseases (STDs), for the benefit of travellers, tourists, persons in transit, immigrants and host populations.

112. In December 1994, the Government of France, in cooperation with WHO, organized a summit of Heads of State and Government, called the "Paris AIDS Summit". In preparation for this summit, strategic meetings were organized at which issues such as blood safety, the development and accessibility of preventative technology, care and support of people affected by HIV/AIDS and prevention of and vulnerability to HIV/AIDS were addressed. The report of the strategic meeting on vulnerability to HIV/AIDS addressed the relationship between HIV/AIDS-related discrimination, human rights and ethics in particular and identified women and children as especially vulnerable groups.

113. In the final document of the Paris AIDS Summit, the Paris Final Declaration, of 1 December 1994, 42 heads of State solemnly declared to, inter alia, undertake in their national policies the protection and promotion of the rights of individuals, in particular those living with or most vulnerable to HIV/AIDS, through the legal and social environment and to ensure equal protection under the law for persons living with HIV/AIDS with regard to access to health care, employment, education, travel, housing and social welfare and to improve women's status, education and living conditions.

114. Another constructive example of promotion of the dignity and rights of people living with HIV/AIDS is the work of the Grupo Pela Vida ("Group for Life"), a loosely-linked network of non-governmental organizations in Brazil. This activist movement, run mainly by volunteers, helps towards the creation of a supportive environment and the strengthening of community action by defining the right to life as the right to complete citizenship. The methods of work of the Group for Life are various. They include outreach through meetings and discussion groups on topics of interest to the participants, which at the same time raise awareness and provide an opportunity for social contacts and solidarity. Workshops to develop personal coping skills, as well as special groups for women, homosexuals and those living in extreme poverty have been created to break through the social barriers and prejudices creating feelings of isolation, fear, clandestinity and loneliness in persons infected with HIV/AIDS.

115. The Group for Life provides a free legal service to individuals who wish to take legal action against institutions which have violated the human rights of persons living with HIV/AIDS, and also gives free legal advice to public hospitals, labour unions and other institutions on the matter. In addition, besides producing oriented information in the form of brochures and a bulletin, the Group for Life has placed a telephone hot-line at the disposal

of the general public. In 1993, the Group successfully launched a nationwide radio campaign for the prevention of HIV/AIDS, which received wide media coverage.

116. The Group for Life has also established an international outlet by being a constituent of the WHO Global Management Committee Task Force on HIV/AIDS. This is a practical way to be regularly informed of the latest developments in research and policy in the field of HIV/AIDS at the international level.

117. The International Confederation of Midwives, a non-governmental organization in consultative status with the Economic and Social Council, in May 1993, adopted a policy/position statement on HIV/AIDS, which recognized that "midwives, by virtue of their close professional relationship with women and their families, are in a unique position to influence changes in lifestyles which may assist in containing the spread of this disease. In keeping with this belief, the midwife should, inter alia, provide education regarding the spread of HIV and ensure that women who are HIV positive or have AIDS have access to non-discriminatory midwifery care in pregnancy, childbirth and the puerperium". This is an example of action taken by a professional interest group in an area of specific concern to promote the human rights and non-discrimination of people living with HIV/AIDS.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. At the national level

118. In conclusion, it is noted with satisfaction that the protection of human rights and the prevention of discrimination have been accepted in principle in the context of many national AIDS programmes. General principles such as the rejection of screening of the whole population, voluntary and informed consent for HIV testing, anonymity and confidentiality of testing and test results and the rejection of mandatory treatment and isolation, as well as the obligation to ensure the safety of blood transfusions, are contained in most of these programmes. Yet a dramatic gap seems to exist between national policies and legislation and their implementation. What is more, many national policies in effect actively interfere with the human rights of the individual and are generally carried out without legal justification.

119. It is strongly urged that all government action which might interfere with internationally respected human rights standards must be provided for and carried out in accordance with the law, and only when the measures taken are proportional with a pressing objective. In the context of HIV/AIDS, coercive policies, such as testing, public disclosure of status, segregation and the discriminatory denial of employment, housing, education and travel have no public health rationale.

120. All Governments that replied reiterated their commitment to the protection of human rights and the prevention of discrimination in the context of HIV/AIDS. Many also stated that measures are being taken at the national level to implement this commitment. However, it is regrettable that only a few replies provided more details concerning these measures, because the

present report was intended to highlight the various types of positive measures that may be taken at the national, regional and international levels to ensure the protection of human rights in the context of HIV/AIDS.

121. Since most national AIDS programmes generally do not contain specific measures for the protection of human rights and prevention of discrimination, Governments are requested, in accordance with Commission on Human Rights resolution 1994/49, to include in their national AIDS programmes specific measures to combat social stigmatization, discrimination and violence directed against persons with HIV/AIDS and to develop a supportive legal and social environment necessary for the effective prevention and care of AIDS.

122. Furthermore, it is recommended that all Governments engage in a careful study of their existing legal systems with a view to identifying and developing the legal instruments necessary for the protection of people infected by HIV/AIDS and their families and associates, for the reduction in vulnerability to infection of certain disadvantaged groups in society and for the implementation of national AIDS programmes, in conformity with national health and development policies and on the basis of respect for human rights.

123. In the context of the effective implementation of national AIDS programmes and the review of legislation and administrative policies, it is recommended that national machinery be established to monitor these processes. This may be done by extending the mandate and responsibilities of existing machinery, such as national human rights commissions, or by setting up new structures. Those States that have already established such bodies are to be commended. It is urged that additional resources be allocated to ensure their effective functioning.

124. Education, outreach and the dissemination of information are generally considered to be the most effective means for preventing and controlling the disease, especially because it is mostly fear and ignorance that result in the ostracism and stigmatization of, and discrimination against, HIV-infected people and people with AIDS. In fact, it has been agreed that "HIV transmission can be prevented through informed and responsible behaviour", 19/ so that it becomes the responsibility of individuals not to put themselves or others at risk of HIV infection, thereby generating a need for self-protection as well as a moral obligation to protect others through behaviour modification. 20/ It is, therefore, satisfying to note that in the domain of education and information in particular the efforts of Governments and non-governmental organizations are increasing.

125. It has been has observed, however, that although many information and education campaigns inform the public on the nature, spread and prevention of the disease from a public health perspective, often the human rights and fundamental freedoms of the individual are not sufficiently addressed. Concepts such as confidentiality and informed consent, non-discrimination and freedom from stigmatization and marginalization should be set in the legal context of existing international and national standards and the Government's obligation to ensure these rights for all human beings needs to be highlighted.

126. It has been noted that already disadvantaged groups or those whose human rights are already not respected are increasingly vulnerable to infection and to the impact of AIDS through diminished access to prevention information, education programmes and health care, and social and legal services and support. Governments should, therefore, take special measures to reach these groups with prevention information and education and with care programmes. Furthermore, the Secretary-General strongly advocates for this reason, a participatory and democratic approach with regard to measures protecting human rights and preventing discrimination in the context of HIV/AIDS is strongly advocated. Persons living with HIV/AIDS should be perceived as an integral part of the solution to the problem and, therefore, be involved in the formulation, planning and execution of such measures, wherever possible. It is only through this participatory approach that a certain acceptability of AIDS prevention and control programmes for most affected groups can be achieved, which in turn results in voluntary behaviour modifications which are essential for effective and durable change.

127. Furthermore, Governments are urged to give increased support to action-oriented social and behavioral research, based on community priorities, that can lead to the development and implementation of improved strategies for reducing people's vulnerability to the risks and consequences of HIV/AIDS.

128. In this connection, increased focus on women and children is recommended, as the consequences of HIV/AIDS not only threaten women's health but also burden their role as caretakers of the sick and destitute. The social, developmental and health consequences of AIDS need to be seen from the perspective of gender, yet this is not always the case. The abolition of the sexual, legal, social and economic subordination of women should be made a human rights imperative, essential for reducing their own and their children's susceptibility to HIV/AIDS and enabling them to respond effectively to the epidemic.

129. In this context, the following suggestions made by the Commission on the Status of Women at its thirty-eighth session in March 1994 are highlighted: a comprehensive, integrated model of health services for women should be applied, adequately funded and available to all at affordable cost; gender-sensitive research and training for health workers and greater participation and effective representation of women, especially female health-care workers, in planning and programme delivery, including training of women doctors and health technicians, should be supported; efforts should be made to combat HIV/AIDS through a recognition of gender factors and their specific and growing impact on women.

130. The development and support are encouraged of national networks of non-governmental organizations and community-based organizations and people living with HIV/AIDS, which engage in advocacy, action, human resources development, consensus-building and legal support for those affected by HIV/AIDS, both those vulnerable to infection and those already infected. These networks should be linked at the regional level and advise the joint and co-sponsored United Nations programme at the international level.

B. At the international level

131. The developments and the progress achieved towards the establishment of a joint and co-sponsored United Nations programme on HIV/AIDS are welcomed. In this connection it is recommended that the six co-sponsoring agencies take urgent steps to incorporate a clear and effective human rights component in the proposed programme, which at present is lacking.

132. Furthermore, in accordance with the Paris Declaration of 1 December 1994, the joint and co-sponsored programme is called upon to strengthen national and international mechanisms that are concerned with HIV/AIDS-related human rights and ethics, including the use of an advisory council and national and regional networks to provide leadership, advocacy and guidance in order to ensure that non-discrimination, human rights and ethical principles form an integral part of the response to the pandemic.

133. Support is expressed for the proposals for global and national initiatives, put forward by the strategic meeting on vulnerability in preparation for the Paris AIDS Summit, which call for the fostering of a supportive climate through a global campaign for tolerance and understanding of people living with HIV/AIDS, spearheaded by the co-sponsoring agencies of the joint and co-sponsored United Nations programme on HIV/AIDS in the context of the International Year of Tolerance in 1995.

134. Bearing in mind the various practices of States with regard to persons infected with HIV or persons with AIDS, as well as the urgent necessity to provide proper protection of the rights and freedoms of these persons and to ensure the application of non-discrimination in all areas of life, the need is recognized for joint effort and action on the part of the international community. As stated by WHO, although there are sufficient general human rights standards that could be applied to HIV/AIDS issues, there is little understanding of how these specifically apply in this area. Therefore, more needs to be done to encourage and guide States to abandon discriminatory and coercive policy and to guide them in the implementation of protective legislation and practice.

135. In this connection, it is recommended that the Commission on Human Rights consider the elaboration of a set of guidelines or principles to assist Governments in shaping their national policies in regard to the human rights dimension of HIV/AIDS. The development of such guidelines or principles could provide an international framework for discussion of human rights considerations at the national, regional and international levels in order to arrive at a more comprehensive understanding of the complex relationship between the public health rationale and the human rights rationale of HIV/AIDS. In particular, Governments could benefit from guidelines that outline clearly how human rights standards apply in the area of HIV/AIDS and indicate concrete and specific measures, both in terms of legislation and practice, that should be undertaken. Given the rapid spread of the disease and its devastating personal, economic and social impact, time is of the essence in this regard.

136. In this context, the recommendation of the Sub-Commission, contained in its resolution 1994/29 of 26 August 1994, that the present report consider the

development of a declaration on respect for human rights in the response to AIDS and guidelines for the prevention of AIDS-related discrimination is particularly welcome.

137. Also welcome is the request of the Sub-Commission, contained in the same resolution, that the Commission on Human Rights consider recommending the organization by the Centre for Human Rights of a second international expert consultation on human rights and AIDS, with particular emphasis on the prevention of AIDS-related discrimination and stigma. This second international consultation may wish to consider preparing a contribution to the drafting of the international guidelines or principles, referred to above.

138. Finally, it is noted with interest that the Sub-Commission, in the same resolution, requested the Commission on Human Rights to consider the appropriate methods by which to keep under continuous review the protection of the rights of people affected by AIDS-related discrimination. It is recommended to the Commission that it consider this question in greater detail at its present session.

Notes

1/ Statement at the World Health Assembly by Dr. Jonathan Mann, then Director of the WHO Global Programme on AIDS, on 5 May 1987 (SPA/INF/87.1, para. 4). He referred to three worldwide epidemics that need to be combated: the silent pandemic of HIV infection, the epidemic of AIDS itself and, thirdly, the epidemic of social, economic, political and cultural reaction and response to HIV/AIDS.

2/ Article 25 of the Universal Declaration of Human Rights (UDHR), article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 11 of the European Social Charter, article 24 of the Convention on the Rights of the Child (CRC) and article 16 of the African Charter on Human and Peoples' Rights (ACHPR).

3/ This analysis is largely based on a background document prepared for the International Consultation on AIDS and Human Rights, held at Geneva from 26 to 28 July 1989 (HR/PUB/90/2, annex III).

4/ Article 12 of UDHR, article 17 of the International Covenant on Civil and Political Rights (ICCPR), article 16 of CRC, article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and article 11 of the American Convention on Human Rights (ACHR).

5/ Article 3 of UDHR, article 9 of ICCPR, article 5 of ECHR, article 7 of ACHR, article 6 of ACHPR. It should be noted that article 5 of the European Convention is qualified by its subparagraph 5 (1) (e) which provides for lawful arrest and detention "for the prevention of the spreading of infectious diseases". This article must, therefore, be carefully interpreted within, for example, the WHO international health regulations.

6/ Article 12 of ICCPR, article 2 of Protocol No. 4 (ECHR), article 22 of ACHR, article 12 of ACHPR.

7/ World Health Organization, "Statement on screening of international travellers for infection with HIV", Geneva, 1987.

8/ Article 13 of ICCPR, article 3 of Protocol No. 4 of the ECHR, article 3 of Protocol No. 7 of the ECHR.

9/ Article 16 of UDHR, article 23 of ICCPR, article 12 of ECHR, article 17 of ACHR, article 18 of ACHPR.

10/ Article 23 of UDHR, articles 6 and 7 (b) of ICESCR, articles 1, 3 and 15 of the European Social Charter and relevant ILO conventions and recommendations referred to below.

11/ E/C.12/1987/SR.5, p. 3.

12/ Report of the Joint WHO/ILO Consultation on AIDS and the Workplace, Geneva, June 1988.

13/ Article 26 of UDHR, article 13 of ICESCR, article 23 of CRC, article 2 of Protocol No. 1 to ECHR and article 17 of ACHPR.

14/ Article 25 to UDHR and article 11 to ICESCR.

15/ Articles 22 and 25 of UDHR, article 9 of ICESCR, articles 12 and 13 of the European Social Charter and relevant ILO conventions and recommendations.

16/ Article 7 of UDHR, article 26 of ICCPR, article 24 of ACHR, article 3 of ACHPR.

17/ In its resolution WHA 41.24, entitled "Avoidance of discrimination in relation to HIV-infected people and people with AIDS", of 13 May 1988.

18/ Aids Health Promotion: Exchange, No. 3, Royal Tropical Institute, Amsterdam, 1994.

19/ World Summit of Ministers of Health Programmes for AIDS Prevention, "London Declaration on AIDS Prevention", 28 January 1988, para. 4.

20/ Council of Europe, Recommendation No. R (89) 14 of 24 October 1989 and explanatory memo.